

Sec. 12-739(d)-1. Application of reported overpayments

(a) **Definitions.** As used in this section, unless the context otherwise requires,

(1) “Estimated tax” means installments of estimated tax required to be paid under section 12-722 of the Connecticut General Statutes;

(2) “Individual” means any natural person and, unless the context otherwise requires, includes any trust or estate;

(3) “Reported overpayment” means the amount by which the tax paid for a taxable year, including all installments of estimated tax paid for the taxable year and all tax deducted and withheld from wages of such individual under chapter 229 of the Connecticut General Statutes, exceeds the amount of tax reported to be due for such taxable year on the tax return therefor, provided, in calculating the amount of tax reported to be due for such taxable year, any credit reported to be allowable shall be subtracted therefrom.

(4) “Tax” means the income tax imposed under chapter 229 of the Connecticut General Statutes; and

(5) “Tax return” means a tax return required to be filed under chapter 229 of the Connecticut General Statutes.

(b) **General Rule.**

(1)

(A) If an individual who is required to pay installments of estimated tax for a taxable year has reported on his or her tax return for the preceding taxable year that he or she has overpaid the tax for such preceding taxable year, then the individual must make one of the following irrevocable elections with respect to such overpayment on such tax return:

(i) to credit all of the reported overpayment against the individual’s estimated tax for the taxable year, by indicating on his or her tax return for such preceding taxable year that all of the reported overpayment is to be credited against the individual’s estimated tax for the taxable year and not to be refunded to the individual or contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes;

(ii) to have all of the reported overpayment refunded to the individual, by indicating on his or her tax return for such preceding taxable year that all of the reported overpayment is to be refunded to the individual and not to be credited against his or her estimated tax for the taxable year or contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes;

(iii) to contribute all of the reported overpayment to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes, by indicating on his or her tax return for such preceding taxable year that all of the reported overpayment is to be contributed to one or more of such accounts and not to be refunded to the individual or credited against his or her estimated tax for the taxable year; or

(iv) to credit all, part or none of the reported overpayment against the individual’s estimated tax for the taxable year and to have the balance of the reported overpayment refunded to the individual or contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes, by indicating on his or her tax return for such preceding taxable year that a designated portion, whether it is all, part or none of the reported overpayment, is to be credited against the individual’s estimated tax for the taxable year and not to be refunded to the individual or contributed to one or more

of the special accounts that are described in section 12-743 of the Connecticut General Statutes, and that, as indicated by the individual on his or her tax return for such preceding taxable year, a designated portion of the balance of the reported overpayment is to be refunded to the individual or contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes and not to be credited against his or her estimated tax for the taxable year.

(B) The amount of the reported overpayment, once elected to be credited against an individual's estimated tax for the taxable year, shall not be refunded, and no interest shall be allowed to the individual on such overpayment so credited. The amount of the reported overpayment, once elected to be refunded to an individual or contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes, shall not be credited against the individual's estimated tax for the taxable year. An individual may not revoke his or her election.

(C) If an individual files an amended tax return, no election described in paragraph (A) of this subdivision may be made upon filing the amended tax return, and any reported overpayment on the individual's amended tax return shall be refunded to the individual and shall not be credited against the individual's estimated tax for the taxable year or contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes.

(2)

(A) As long as the tax return for such preceding year is filed with the Department on or before its due date or, if an extension of time to file has been requested and granted, its extended due date, and, subject to the provisions of subdivisions (3) and (4) of this subsection, the reported overpayment, once credited against an individual's estimated tax for his or her taxable year, shall be treated as if paid on the due date of the first required installment of estimated tax for such taxable year. Such reported overpayment shall be credited against otherwise unpaid required installments in the order in which such installments are required to be paid under section 12-722(c) of the Connecticut General Statutes.

(B) If the tax return for such preceding year is filed with the Department after its due date or, if an extension of time to file has been requested and granted, its extended due date, the reported overpayment shall be treated as if paid on the date that such tax return is filed. Subject to the provisions of subdivisions (3) and (4) of this subsection, the reported overpayment will be credited to the required installments of estimated tax in the order in which such installments were required to be credited under section 12-722 of the Connecticut General Statutes.

(C) The following examples illustrate the application of this subdivision:

Example 1: X, an individual, timely requests and is granted an extension of time to file his tax return for his taxable year ending December 31, 2001. On the extended due date for such return (October 15, 2002), X files his tax return for such year, electing thereon to credit the reported overpayment to his estimated tax for his taxable year ending December 31, 2002. Subject to the provisions of subdivisions (3) and (4) of this subsection, the reported overpayment will be treated as if paid on the due date of the first required installment of estimated tax for X's taxable year ending December 31, 2002, including any required

installment due before the date on which the tax return for the taxable year ending December 31, 2001 is filed, and will be credited to the required installments of estimated tax for X's taxable year ending December 31, 2002 in the order in which such installments were required to be credited under section 12-722 of the Connecticut General Statutes (first to the installment due April 15, 2002, any remaining balance then to be credited to the installment due June 15, 2002, any remaining balance then to be credited to the installment due September 15, 2002 and any remaining balance then to be credited to the installment due January 15, 2003).

Example 2: W, an estate, timely requests and is granted an extension of time to file its tax return for its taxable year ending July 31, 2002. On May 16, 2003, after the extended due date for such return (May 15, 2003), W files its tax return for such year, electing thereon to credit the reported overpayment to its estimated tax for its taxable year ending July 31, 2003. Subject to the provisions of subdivisions (3) and (4) of this subsection, the reported overpayment will be credited to the required installments of estimated tax for W's taxable year ending July 31, 2003 in the order in which such installments were required to be credited under section 12-722 of the Connecticut General Statutes, but will be treated as if paid on the date that such tax return is filed (May 16, 2003). If W has not otherwise made payment of its required installments of estimated tax for the taxable year ending July 31, 2003, the reported overpayment will be credited first as an untimely payment of the required installment due November 15, 2002, any remaining balance then to be credited as an untimely payment of the required installment due January 15, 2003, any remaining balance then to be credited as an untimely payment of the required installment due April 15, 2003, and any remaining balance then to be credited as a timely payment of the required installment due August 15, 2003.

(3)

(A) If, after processing an individual's tax return for such preceding taxable year, the Department determines that the amount of the reported overpayment is incorrect, the Department shall make appropriate adjustments (including the reduction of the reported overpayment so credited, if the Department determines that the reported overpayment exceeds the actual overpayment, and, where such reduction results in an underpayment of estimated tax, the imposition of an addition to tax under section 12-722 of the Connecticut General Statutes). Processing a tax return means performing a mathematical verification of the reported overpayment, and involves mathematical verification of the amount of tax paid for a taxable year, including all installments of estimated tax paid for the taxable year, and mathematical verification of the amount of tax reported to be due for such taxable year on the tax return for such taxable year, which verification shall be based upon the income that the individual has reported and the filing status that the individual has claimed on such tax return. Processing a tax return does not mean performing an audit examination of the tax return under section 12-728 of the Connecticut General Statutes. If the Department determines, after processing an individual's tax return for such preceding taxable year, that the amount of the reported overpayment is correct and, subsequently, as the result of performing an audit examination of such tax return, makes a deficiency assessment, the crediting, at the time of processing of such tax return, of the reported overpayment will not be affected by the making of such assessment.

(B) The following examples illustrate the application of this subdivision:

Example 3: Y, an individual, timely files her tax return for her taxable year ending December 31, 2001, electing thereon to credit a reported overpayment of \$1,000 to her estimated tax for her taxable year ending December 31, 2002. After processing such return, the Department determines that the amount of the reported overpayment is incorrect, and that the actual overpayment is only \$500. If the amount of Y's first required installment, as defined in section 12-722 of the Connecticut General Statutes, of estimated tax for her taxable year ending December 31, 2002 is \$1,000 and Y otherwise has made no payment toward such first required installment, Y has underpaid her first required installment by \$500 and is subject to an addition to tax under section 12-722 of the Connecticut General Statutes.

Example 4: N, an individual, timely files his tax return for his taxable year ending December 31, 2001, electing thereon to credit a reported overpayment of \$10,000 to his estimated tax for his taxable year ending December 31, 2002. After processing such return, the Department determines that the amount of the reported overpayment is correct. Before the expiration of the period within which an audit examination may be performed under section 12-728 of the Connecticut General Statutes, the Department examines N's tax return for his taxable year ending December 31, 2001, and, having determined that N failed to correctly calculate his Connecticut adjusted gross income, makes a deficiency assessment of \$5,000 plus statutory interest (plus a penalty under section 12-728 of the Connecticut General Statutes, if appropriate) against N. The making of such deficiency assessment will not affect the crediting of the reported overpayment of \$10,000 to N's first required installment of estimated tax for his taxable year ending December 31, 2002.

(4)

(A) Notwithstanding the provisions of this subsection, the Department, within any applicable period of limitations, shall credit any overpayment of tax (and interest, if any, on such overpayment)—

(i) first, against any outstanding liability for any tax (or for any penalty, interest, or addition to the tax) which is imposed under the Connecticut General Statutes, which is payable to the Department, and which is owed by the individual who made the overpayment, provided such tax (or such penalty, interest, or addition to the tax) is unpaid and a period in excess of thirty days has elapsed following the date on which such tax (or such penalty, interest, or addition to the tax) was due; and such tax (or such penalty, interest, or addition to the tax) is not the subject of a timely filed administrative appeal or of a timely filed appeal pending before any court of competent jurisdiction;

(ii) second, any remaining balance is then to be credited against any debt or obligation for which the Commissioner of Administrative Services is seeking reimbursement and which is owed by the individual who made the overpayment, provided such debt or obligation is unpaid and a period in excess of thirty days has elapsed following the date on which such debt or obligation was due; and such debt or obligation is not the subject of a timely filed administrative appeal or of a timely filed appeal pending before any court of competent jurisdiction;

(iii) third, any remaining balance is then to be credited against any tax (or for any penalty, interest, or addition to the tax) which is imposed under the Internal Revenue Code, which

is payable to the Internal Revenue Service, which is owed by the individual who made the overpayment, and upon which a levy has been made by the Commissioner of Internal Revenue;

(iv) fourth, any remaining balance is then to be credited against any taxes for general or special purposes levied by a municipality, any taxes imposed under chapter 223 and payable to such municipality, any fines, penalties, costs or fees payable to such municipality for the violation of any lawful regulation or ordinance in furtherance of any general powers as enumerated in section 7-148 of the Connecticut General Statutes, or any charge payable to such municipality for connection with or for the use of a waterworks or sewerage system, which taxes, fines, penalties, costs or fees, or charges, are owed by the individual who made the overpayment, where, pursuant to section 12-2 of the Connecticut General Statutes, an agreement exists between the Department and the governing authority of such municipality providing for the collection by the Department, on behalf of such municipality, of such taxes, fines, penalties, costs or fees, or charges, provided such taxes, fines, penalties, costs or fees, or charges, are unpaid and a period in excess of thirty days has elapsed following the date on which they were due; and such taxes, fines, penalties, costs or fees, or charges, are not the subject of a timely filed administrative appeal or of a timely filed appeal pending before any court of competent jurisdiction;

(v) fifth, any remaining balance is then to be credited against any taxes for which a tax officer of a claimant state has, in accordance with section 12-35f of the Connecticut General Statutes, requested the Department to withhold all or a portion of any refund or credit to which such individual would otherwise be entitled and submitted the required certification, provided, if any such withholding is timely protested by such individual in accordance with section 12-35f of the Connecticut General Statutes, the tax officer of the claimant state recertifies that such taxes are finally due and payable to the claimant state, are legally enforceable under the laws of such state against such individual and any administrative or judicial remedies, or both, have been exhausted or have lapsed; and

(vi) sixth, any remaining balance is then, in accordance with the election made by the individual under paragraph (A) of subdivision (1) of this subsection, to be refunded to the individual, contributed to one or more of the special accounts that are described in section 12-743 of the Connecticut General Statutes or credited to the required installments of estimated tax for the taxable year.

(B) The following examples illustrate the application of this subdivision: Example 5: R, an individual, timely files her tax return for her taxable year ending December 31, 2001, electing thereon to credit a reported overpayment of \$4,000 to her estimated tax for her taxable year ending December 31, 2002. After processing such return, the Department determines that the amount of the reported overpayment is correct. However, R has an outstanding liability of \$100 for an addition to the tax under section 12-722 of the Connecticut General Statutes for a preceding taxable year and an outstanding liability of \$1,500 for use tax (and \$500 of interest thereon) under section 12-411 of the Connecticut General Statutes. Neither liability is the subject of a timely filed administrative appeal or of a timely filed appeal pending before any court of competent jurisdiction. The Department will notify R that the reported overpayment will be applied to her outstanding liability of \$100 for an addition to the tax under section 12-722 of the Connecticut General Statutes

for a preceding taxable year and her outstanding liability of \$1,500 for use tax (and \$500 of interest thereon) under section 12-411 of the Connecticut General Statutes. The balance of \$1,900 will be applied to R's estimated tax for her taxable year ending December 31, 2002. If the amount of R's first required installment of estimated tax for her taxable year ending December 31, 2002 is \$2,000 and she otherwise made no payment toward such first required installment, R has underpaid her first required installment by \$100 and is subject to an addition to tax under section 12-722 of the Connecticut General Statutes.

Example 6: M, an individual, timely files his tax return for his taxable year ending December 31, 2001, electing thereon to credit a reported overpayment of \$1,000 to his estimated tax for his taxable year ending December 31, 2003. After processing such return, the Department determines that the amount of the reported overpayment is correct. However, M has an outstanding liability of \$500 for real estate conveyance tax (and \$100 of interest thereon) under section 12-494 of the Connecticut General Statutes, and this liability is the subject of a timely filed administrative appeal or of a timely filed appeal pending before any court of competent jurisdiction. Therefore, this liability will not affect the crediting of the reported overpayment of \$1,000 to M's estimated tax for his taxable year ending December 31, 2003.

(5) The amount of a reported overpayment on a joint return that may be credited to one spouse's outstanding separate liability for any tax which is imposed under the Connecticut General Statutes and which is payable to the Department shall be computed by subtracting such spouse's share of the joint liability, determined in accordance with § 12-732(a)-2 of Part XII, from such spouse's contribution to the joint liability, determined in accordance with § 12-732(a)-2 of Part XII, provided the amount so credited may not exceed the amount of the reported overpayment on the joint return. The same rule shall apply in determining the amount of a reported overpayment on a joint return that may be credited to one spouse's outstanding separate liability for any taxes, debts or obligations, fines, penalties, costs or fees, or charges to which the provisions of subdivision (4) of this subsection apply.

(Adopted effective February 10, 2004)